

Message Text

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TO AMEMBASSY NEW DELHI IMMEDIATE

C O N F I D E N T I A L STATE 105302

JOINT STATE/AID

E.O. 11652:GDS - APRIL 24, 1979

TAGS:

SUBJECT: GUJARAT MEDIUM IRRIGATION PROJECT

REFS: (A) NEW DELHI 6244, (B) NEW DELHI 6246, STATE 102397

1. WE STRONGLY PREFER CO-FINANCING ARRANGEMENTS CONSISTENTLY ENVISIONED TO THIS POINT TO SEPARATE ARRANGEMENT PROPOSED IN REF (B) FOR NUMBER OF REASONS, I.E., EASE OF ADMINISTRATION, LETTING IBRD CARRY PREDOMINANT ROLE OF MONITORING, STAFFING IMPLICATIONS, DIFFICULTIES IN ELEVENTH HOUR REARRANGEMENTS, APPEAL OF CO-FINANCING WITH
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CONGRESS, AND SO ON. FOLLOWING COMMENTS ARE FOR YOUR INFORMATION SO THAT YOU MAY BETTER UNDERSTAND THINKING HERE. DO NOT APPROACH GOI UNTIL AFTER WE HAVE COMPLETED DISCUSSIONS HERE WITH INDIAN EMBASSY.

2. RECOGNIZE THAT IN ASSERTING CO-FINANCING PREFERENCE, WE WOULD NEED TO TREAT THE "TWO GENERAL PROBLEMS" POSED BY THE INDIANS IN PARA 3, REF (A). HOWEVER, WE BELIEVE

THAT PERSUASIVE ARGUMENTS EXIST TO MEET THOSE CONCERNS
AND STILL PROTECT OVERALL INTEGRITY OF CO-FINANCING
ARRANGEMENTS FROM ALL POINTS OF VIEW.

A. FIRST, WITH RESPECT TO LEGISLATIVE "CONDITIONS" FOR
LOANS REFERRED TO IN PARA 3.A., REF (A), WE DO NOT SEE

THIS AS REAL PROBLEM. CONGRESS DOES NOT NORMALLY ENACT
NEW CONDITIONS FOR ASSISTANCE PROGRAMS WHICH APPLY RETRO-
ACTIVELY TO EXISTING OBLIGATIONS. SUCH CONDITIONS WOULD
APPLY ONLY TO NEW OBLIGATIONS OF ASSISTANCE, WHETHER
MULTILATERAL OR BILATERAL. WE ARE UNAWARE OF ANY INSTANCE
IN WHICH CONGRESS HAS PASSED RETROACTIVE CONDITIONS.

EVEN IF ONE CONSIDERS SECTION 620-TYPE PROHIBITIONS AS
PART OF INDIAN CONCERN, THEY ARE ALMOST ALWAYS ENACTED
TO APPLY PROSPECTIVELY. MOREOVER, EVEN ON THE REMOTEST
POSSIBILITY OF A CONGRESSIONAL CUT-OFF OF EXISTING AID
TO A COUNTRY THAT WOULD SUSPEND BILATERAL AND NOT MULTI-
LATERAL ASSISTANCE, ALL THAT WOULD BE REQUIRED IN THIS
PARTICULAR PROJECT WOULD BE TAILORING TO ACCOMMODATE
PROJECT ACTIVITIES TO IBRD'S CONTRIBUTION MINUS THE U.S.
INPUT WHICH WOULD STILL LEAVE A VIABLE PROJECT. AND, WE
REPEAT THAT GIVEN THE HISTORY OF OUR LEGISLATION, SUCH A
POSSIBILITY OF A RETROACTIVE CUT-OFF, THAT WOULD APPLY,
MOREOVER, EVEN IN THE CASE OF A MULTILATERAL PROJECT
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(WHICH MAKES THE PROSPECT EVEN MORE UNLIKELY) IS REMOTE
INDEED.

B. TURNING TO THE GOI'S CONCERN STATED PARA 3.B.,
REF (A), THAT OF HAVING THE SAME SET OF PROJECT SPECIFIC
CONDITIONS IN THE IBRD AND A.I.D. AGREEMENTS, WE THINK
WE CAN OFFER A SOLUTION THAT WILL MEET THE INTERESTS OF
ALL PARTIES IN THE CO-FINANCING ARRANGEMENT. A.I.D. HAS
ALWAYS INTENDED THAT SINCE IT WAS TO BE A MINOR DONOR TO
THIS PROJECT THAT THE IBRD AND GOI SHOULD BE ESSENTIALLY
RESPONSIBLE FOR SETTING UP AND NEGOTIATING SUCH CONDITIONS.
IN VIEW OF ITS LIMITED ROLE, MOREOVER, A.I.D. BELIEVES
THAT SINCE THE IBRD WILL CARRY THE WEIGHT OF DECIDING
WHAT PROJECT SPECIFIC CONDITIONS ARE ACCEPTABLE, IT SHOULD
ALSO DECIDE WHETHER, DURING THE COURSE OF PROJECT IMPLE-
MENTATION, THERE ARE ANY VIOLATIONS BY THE BORROWER OF
THOSE CONDITIONS AND WHAT ENFORCEMENT ACTION TO TAKE WITH
RESPECT THERETO. A.I.D.'S BASIC CONCERN IS THAT IF THE
IBRD SHOULD DETERMINE ANY SUCH VIOLATIONS OF ITS CON-
DITIONS AND DECLARE A DEFAULT OR TERMINATE DISBURSEMENTS,
A.I.D. SHOULD BE ABLE TO TAKE SIMILAR ACTION ON ITS COM-
PARATIVELY MINOR CONTRIBUTION TO THE PROJECT. IF A.I.D.

WERE NOT TO HAVE THAT SIMPLE RECOURSE, THE END RESULT IN SUCH A CASE COULD BE CUT-OFF OF THE IBRD'S 74 PERCENT CONTRIBUTION, CONTINUATION OF A.I.D.'S 26 PERCENT AND A PROJECT THAT IS NO LONGER VIABLE.

ACCORDINGLY, WE ENVISAGE THAT PROJECT SPECIFIC CONDITIONS WOULD BE HANDLED IN AGREEMENTS ESSENTIALLY AS FOLLOWS. THE IBRD WOULD INCLUDE ALL ITS CONDITIONS IN ITS AGREEMENT

AND THEY WOULD NOT REPEAT NOT BE INCLUDED IN THE A.I.D. AGREEMENT. A.I.D. WOULD INCLUDE BY WAY OF SPECIAL COVENANTS AN APPROPRIATE CLAUSE ON ENVIRONMENT, WHICH WE ASSUME WOULD POSE NO PROBLEMS. TO CARRY OUT A.I.D.'S CONCERN NOTED IN THE PRECEDING PARAGRAPH, A.I.D. WOULD
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SIMPLY BROADEN ITS EVENT OF DEFAULT CLAUSE (SECTION D.2(B) OF PROVISIONS ANNEX TO HANDBOOK 3 STANDARD AGREEMENT) TO READ APPROXIMATELY AS FOLLOWS: QUOTE TO COMPLY WITH ANY OTHER PROVISION OF THIS AGREEMENT, OR TO COMPLY WITH THE IBRD CREDIT AGREEMENT FOR THE PROJECT AS DETERMINED BY THE IBRD UNQUOTE. THIS SIMPLE, UNOBSTRUSIVE CHANGE AFFECTING SOLELY THE DEFAULT AND SUSPENSION PROVISIONS, IN OUR VIEW, ACCOMMODATES THE GOI'S CONCERN WITH RESPECT TO A.I.D.'S ROLE IN ESTABLISHING OR MONITORING PROJECT SPECIFIC CONDITIONS AND EXCLUDES SUCH CONDITIONS FROM THE A.I.D. AGREEMENT, WHILE PROTECTING A.I.D. IN THE REMOTE EVENT THAT THE IBRD WOULD TAKE SOME TERMINAL ACTION ON ITS AGREEMENT. NOTE: BANK STAFF RECALL NO SUCH INS-TANCE OF SUSPENSION IN THE COURSE OF INDIA PROGRAMS.

3. THE GOI'S SENSITIVITIES AS REPORTED REFTTEL REQUIRE INQUIRY INTO MISSION'S PROGRESS IN REVIEWING A.I.D.'S BOILERPLATE LOAN PROVISIONS BEFORE PROCEEDING WITH AUTHORIZATION OF EITHER CO-FINANCING OR SEPARATE ARRANGEMENT. MOREOVER, ANY SUBSTANTIAL PROBLEMS REQUIRE SUR-FACING NOW SINCE THIS PROJECT AGREEMENT LIKELY TO PROVIDE PRECEDENTIAL LANGUAGE FOR FUTURE AGREEMENTS. WE HAVE IN MIND, FOR EXAMPLE, SUCH CLAUSES AS BROAD AUDIT RIGHTS PROVISION AND EXTRAORDINARY SITUATION SUSPENSION PROVISION, AMONG OTHERS. ESSENTIAL, THEREFORE, THAT YOU GET DEFINI-TIVE REACTION FROM RESPONSIBLE GOI OFFICIALS ON BOILER-PLATE AND ANY SIGNIFICANT PROBLEMS IT CREATES, BRINGING TO THE GOI'S ATTENTION ONLY THOSE MATTERS IN BOILERPLATE THAT, IN YOUR DISCRETION, IT IS NECESSARY TO RAISE AT THIS TIME (E.G. YOU ARE AWARE OF EXTRAORDINARY SITUATION CLAUSE BACKGROUND IN INDIA; IN OUR VIEW, WHILE PUTTING ALL THE BOILERPLATE, INCLUDING THIS CLAUSE BEFORE GOI, IT WOULD BE BEST NOT TO INITIATE DISCUSSION ON 1971 BACKGROUND).
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4. AS STATED ABOVE, OUR CLEAR PREFERENCE IS TO REMAIN IN CO-FINANCING RELATIONSHIP WITH IDA. HOWEVER, IF DISCUSSIONS AT POLITICAL LEVEL CONCLUSIVELY INDICATE THAT CO-FINANCING NOT VIABLE APPROACH, WE WILL CONSIDER ALTERNATE ARRANGEMENTS AS PROPOSED REF (B) ALTHOUGH WE DO SEE A SEPARATE SET OF PROBLEMS ARISING FROM A STRICT BILATERAL PROJECT ARRANGEMENT. IN VIEW FACT THAT WE SHALL BE ACTIVELY PURSUING CO-FINANCING APPROACH IN DISCUSSIONS HERE WITH INDIANS, THIS CABLE WILL NOT FURTHER ELABORATE OUR VIEWS ON SEPARATE PROJECT AT THIS TIME.

5. WE WILL BE SITTING IN ON IDA/GOI NEGOTIATION MONDAY AND TUESDAY, APRIL 24 AND APRIL 25, AS ACTIVE OBSERVERS. IDA INDIA OFFICE ENCOURAGES THIS ROLE, SEEMING TO FEEL THAT PROBLEMS NOT SO SERIOUS AS FIRST REPORTS WOULD SUGGEST AND THAT CO-FINANCING CAN STILL BE PREFERRED COURSE OF ACTION. YOUR VIEWS ON ABOVE WELCOMED. OUR COMMENTS ON CO-FINANCING APPROACH OFFERED ON FYI BASIS; NO SPECIFIC DEMARCHE TO GOI ON OUR BEHALF NECESSARY NOW. WE WILL MAKE NO FORMAL RECOMMENDATIONS ON WHICH COURSE (CO-FINANCING, SEPARATE, DROP OUT) TO FOLLOW UNTIL WE HAVE MET AT SENIOR LEVEL WITH EMBASSY AND/OR GOI NEGOTIATING TEAM REPS AND HAVE HEARD MORE FROM YOU. UNTIL THAT TIME, CO-FINANCING ON NON-DISCRIMINATORY BASIS AS OUTLINED PARA 2 IS STILL STRONG WASHINGTON PREFERENCE. VANCE

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